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May 26, 2009

**Via Hand Delivery**

Honorable William H. Pauley III  
United States Courthouse  
500 Pearl Street, Room 2210  
New York, New York 10007

Re: Annette Smith v. National Basketball Association  
and Bernard Tolbert, Index No. 08 Civ. 7888 (WHP)(RLE)

Dear Judge Pauley:

We represent Defendants National Basketball Association ("NBA") and Bernard Tolbert (collectively, "Defendants") in the above-referenced matter. We write, with consent of Plaintiff's counsel, to request that expert discovery in this case be adjourned in light of Defendants' intention, should the Court grant leave, to move for summary judgment following the closure of fact discovery.

As Your Honor may recall, the parties recently made, and the Court granted, an application to extend fact discovery in this matter until May 29, 2009. *See* Docket Entry No. 12. Following the parties' request, Defendants received an Expert Disclosure pursuant to Rule 26(a)(2) designating Dr. Stephen Reich as Plaintiff's expert witness on the issue of her alleged emotional distress. Included with Plaintiff's designation was a report based on Dr. Reich's evaluation of Ms. Smith. Under Rule 26(a)(2)(C), Defendants would be required to designate a rebuttal expert within thirty (30) days of Plaintiff's disclosure.

Because Defendants' intend to seek leave to file a motion for summary judgment following the close of fact discovery, the parties jointly request that any expert discovery (including Defendants' designation of an expert to examine Plaintiff and prepare a rebuttal report and any depositions of the parties' respective experts) be deferred until after the Court determines whether to grant Defendants leave to file a motion for summary judgment and, if such leave is granted, until after the Court rules on such motion. The parties believe this arrangement will avoid the additional expenditure of time and resources on expert discovery should Defendants be

Application Granted  
SO ORDERED:

  
WILLIAM H. PAULEY III U.S.D.J.

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Honorable William H. Pauley III


May 26, 2009

Page 2

permitted to proceed with a motion for summary judgment, while at the same time reserving their rights to conduct such discovery if and when necessary.

The parties have not made any previous requests to adjourn, or otherwise postpone, expert discovery.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Evandro C. Gigante', with a stylized flourish extending from the end.

cc: Derek T. Smith, Esq.